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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

ALAMEDA-CONTRA COSTA TRANSIT
DISTRICT,

Petitioner,

v.

THE SUPERIOR COURT OF ALAMEDA
COUNTY,

Respondent;

DEJON DISBURKE,

Real Party in Interest.

A099335

(Alameda County
Super. Ct. No. 2002-044842)

Petitioner Alameda-Contra Costa Transit District (AC Transit) challenges the trial court's order granting real party in interest Dejon Disburke (Disburke) relief from the claim-presentation requirement of the Government Tort Claims Act. We agree that Disburke failed to make the requisite showing for relief and, accordingly, grant the petition for a writ of mandate.

I. FACTUAL AND PROCEDURAL BACKGROUND

Under the Government Tort Claims Act, a party who wishes to bring a personal injury action against a public entity must present a written claim to the public entity not later than six months after the date of the accident giving rise to the injury. (Gov. Code,

§§ 911.2, 945.4.)¹ An injured party who fails to do so may submit a written application to the public entity for leave to present a late claim. (§ 911.4, subd. (a).) The application must be submitted within a reasonable time not to exceed one year after the date of the accident. (§ 911.4, subd. (b).) If the public entity denies the application for leave to present a late claim, the injured party may then petition the trial court for relief from the claim-presentation requirement. (§ 946.6, subd. (a).)

In the present case, Disburke sought such relief under section 946.6, subdivision (c)(3), which provides that the trial court shall grant relief “if the court finds that the application to the [public entity for leave to present a late claim] was made within a reasonable time not to exceed [one year] and was denied or deemed denied” and if “[t]he person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time.” In support of his petition for relief, Disburke submitted the following declaration:

“On April 13, [2001], I was a passenger in the front seat of a vehicle that was being driven by Sidney Toussant. The vehicle belonged to his mother, Latroy Wesley. [¶] Mr. Toussant was driving the car in a northerly direction along Market Street in Oakland, approaching the intersection of 18th Street. At that point, an A. C. Transit bus was coming down Market Street in the opposite direction and made a left turn in front of us. Our vehicle struck the left, rear of the bus, and I was thrown through the windshield. I lost consciousness at the scene of the accident, and I had to be revived by electrical stimulus to my heart. I suffered, among other things, a broken and deformed foot, a lacerated throat, a laceration under my chin, a lacerated, right hand, glass in my right hand and glass in my forehead. [¶] I was incarcerated on July 21, 2001, and I was not released until December 9, 2001. I never got around to consulting with an attorney before I got incarcerated because I was still recuperating from my injuries, and my foot injury made it extremely difficult for me to get around.”

¹ All further statutory references are to the Government Code unless otherwise indicated.

Over AC Transit's opposition, the trial court granted the petition for relief, ruling that Disburke's incarceration constituted "physical incapacity" within the meaning of section 946.6, subdivision (c)(3). The instant petition for a writ of mandate followed.

II. DISCUSSION

As noted above, the trial court's decision to grant relief was premised on its holding that Disburke's incarceration from July 21, 2001 through December 9, 2001, a period that included the last half of the six-month claim-presentation period, constituted "physical incapacity" within the meaning of section 946.6, subdivision (c)(3). We disagree.

While nothing in the Government Tort Claims Act expressly defines the term "physical incapacity," it is clear from the overall statutory scheme that it does not encompass incarceration per se. For example, under section 945.6, subdivision (c), even persons sentenced to imprisonment in a state prison are expected to comply with the claim-presentation requirement. Moreover, even if the term "physical incapacity" were broad enough to include incarceration, Disburke's showing would nevertheless be inadequate because he made no attempt to show that he failed to present a timely claim "by reason of" his incarceration (§ 946.6, subd. (c)(3)), relying instead on the mere fact of the incarceration. For instance, Disburke made no showing that he was unable to contact an attorney or to otherwise research or investigate his claim while he was incarcerated.²

Because Disburke's showing was inadequate as a matter of law, the trial court should not have granted his petition for relief from the claim-presentation requirement of the Government Tort Claims Act. We have reached our decision herein after notice to all parties that we might act by issuing a peremptory writ in the first instance and after considering opposition from Disburke. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984))

² At the hearing on Disburke's petition for relief, the trial court suggested that "inadvertence" (§ 946.6, subd. (c)(1)) might afford an alternative basis for relief, remarking "I'm sure he didn't go to jail on purpose." Again, however, Disburke failed to demonstrate any nexus between his incarceration and his failure to present a timely claim.

36 Cal.3d 171, 180.) AC Transit's right to relief is clear and no purpose would reasonably be served by plenary consideration of the issue. (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1241.)

III. DISPOSITION

Let a peremptory writ of mandate issue directing respondent superior court to vacate its order granting the petition for relief from the claim-presentation requirement of the Government Tort Claims Act and to enter a new and different order denying the petition for relief. Each party shall bear its own costs herein.

McGuiness, P.J.

We concur:

Corrigan, J.

Pollak, J.